

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

NBC, INC. d/b/a WCAU-TV (NBC 10)

Employer

and

Case 6-UC-424
(formerly 4-UC-372)

AMERICAN FEDERATION OF TELEVISION
AND RADIO ARTISTS, PHILADELPHIA LOCAL

Union-Petitioner

DECISION AND ORDER

Upon a petition¹ duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before Wendy B. Silver, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

Upon the entire record in this case,³ the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Petition was duly filed in Region 4 of the Board and captioned as Case 4-UC-372. Following the close of the hearing in this matter, the General Counsel, by order dated September 13, 2000, transferred this case to Region 6 of the Board for, among other things, the preparation of the Decision in this matter. The Order further provides that upon issuance of the Decision, to the extent that further processing is appropriate to effectuate the issued Decision, the case will automatically transfer back and continue in Region 4 as Case 4-UC-372.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C., 20570-0001. This request must be received by the Board in Washington, D.C. by November 20, 2000.

³ Both the Employer and the Union timely filed briefs in this matter which have been duly considered by the undersigned.

2. NBC, Inc. d/b/a WCAU-TV (NBC 10) (the Employer) is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. American Federation of Television and Radio Artists, Philadelphia Local (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

The Union is currently the certified bargaining representative of the following unit of the Employer's employees:

All persons who are regularly employed by the [Employer] as staff or freelance announcers ("Announcers"); and actors, dramatic narrators, singers, dancers, critics and program hosts ("Artists"); and newscasters, sportscasters, weathermen, news analysts, news commentators, news correspondents, news writers, news reporters, news editors and news producers ("Newspersons"), but excluding all persons who are employed primarily for their specialized knowledge and training in a field outside the required abilities of an Announcer or Artist or Newsperson, the authoritative voicing of which is dependent upon such knowledge and training, and excluding producers and all other supervisory employees and guards as defined in the Act.

On June 5, 2000, the Union filed the instant petition seeking to include in the unit "all news writers who are employed by the Employer to write, edit, and/or produce news for the Employer's web site." Specifically, the Union seeks to include the Employer's four multimedia administrators⁴ in the bargaining unit because their job duties changed significantly after the execution the parties' 1999-2002 collective-bargaining agreement. The Union further argues that the multimedia administrators now share a community of interest with bargaining unit newsmen.⁵ The Employer argues that the instant petition is untimely because the job classification existed prior to the execution of the current contract, which does not include the

⁴ The job classification that the Union seeks to include in the bargaining unit was referred to by several different names during the hearing, including interactive administrator, Internet administrator, MSNBC affiliate producer, and multimedia administrator. I will use the term "multimedia administrator" in referring to the job classification for purposes of clarity and because the Employer traditionally has used this title in referring to the classification.

⁵ I will use the general term of "newsperson" to refer to news writers and news producers who are part of the bargaining unit. Throughout the hearing and in the parties' post-hearing briefs, the multimedia administrators were compared to the bargaining unit classifications of news writer and news producer.

multimedia administrators in the bargaining unit,⁶ and there have been no recent substantial changes in job duties. The Employer also argues that the multimedia administrators do not share such a community of interest with bargaining unit employees as to warrant their accretion into that unit.

I. FACTS

The Employer, which is part of the NBC network, operates a television station, Channel 10, in Philadelphia from which it produces and broadcasts television news programs. The Employer broadcasts television news from 5 a.m. to 7 a.m. and from 4 p.m. to 6:30 p.m. While the Employer does not broadcast a 12 Noon news program, it does broadcast cut-ins, which are basically short news updates, during other programs.

A. Events Before the Execution Of the Current Contract

The first multimedia administrators were hired in January 1997, and the Employer currently employs four individuals in this classification.⁷ From the time that the job classification was established, multimedia administrators have been responsible for reformatting and posting on the Employer's web site news stories previously broadcast during one of the Employer's television newscasts.⁸ In reformatting a story for the Employer's web site, multimedia administrators first convert television news scripts to Microsoft Word files and edit the stories for punctuation and capitalization. By means of available computer programs, multimedia administrators then insert related web links and still frame pictures obtained from news video

⁶ It is not clear if the Employer argues that the unit description specifically excludes multimedia administrators. The record is clear, however, that the parties have historically not included multimedia administrators in the bargaining unit.

⁷ One of these individuals, Bill Lawrence, is a leased employee.

⁸ While the record testimony focused on the reformatting of previously broadcast news stories, Brett Hurwitz, the Employer's Director of Interactive Development, testified that multimedia administrators also reformat and post on the web site yet to be televised stories written by newsmen.

into the reformatted story. Finally, the reformatted stories containing the pictures and web links are posted on the Employer's web site. Prior to January 2000, the multimedia administrators posted the reformatted stories directly on the MSNBC web site. A computer program called "Harvester" would then copy and automatically forward the story to the Employer's web site.

With respect to reformatting previously broadcast news stories, multimedia administrators also traditionally engaged in the practice of updating such stories. Bernadine Waller, the only current multimedia administrator to testify at the hearing, was hired into the position in November 1998. Waller testified that even in November 1998, she routinely monitored other television newscasts in order to determine if a story had developed. Waller stated that the multimedia administrators were permitted to use this new information to update stories that were to be posted on the Employer's web site. According to Waller, however, this type of conduct was not as common in November 1998 as it was after January 2000.

Other traditional functions of the multimedia administrators involve conducting on-line chats with viewers and responding to e-mail messages from viewers. The Employer temporarily has discontinued on-line chats.

In addition to multimedia administrators, there are other employees involved in the Employer's Internet operation. The Employer retains a web master and two assistant web masters who, among other things, create surveys for the Employer's web site. The web master and assistant web masters are supervised by Director of Interactive Development Brett Hurwitz. In this position, Hurwitz is responsible for the appearance and content of the Employer's web site. When Hurwitz was hired in November 1998, the multimedia administrators reported directly to him. Shortly after November 1998, Hurwitz decided that the Employer's news department should "sign off" on stories before they were posted on the web site. As a result, Assistant News Director Susan Tully began to review the reformatted news stories.

B. Execution Of the Current Contract

From approximately February to April 1999, the Employer and the Union engaged in negotiations for a collective-bargaining agreement. During the negotiations, the Union neither sought to include the multimedia administrators in the bargaining unit nor reserved the right to file a unit clarification petition about the matter. As result of the negotiations, the parties entered into an agreement with a term of April 1, 1999 to March 31, 2002.

C. Events After the Execution Of the Current Contract

In June 1999, the multimedia administrators began to report to Assistant News Director Tully. Prior to this time, Tully only reviewed reformatted stories before they were posted on the Employer's web site. Although the multimedia administrators began to report to Tully, they could obtain approval to post a news story from other managers.

At some point between May and November 1999, the Employer introduced a new computer program called "E-News," which provides subscribers with daily e-mail messages containing approximately two or three top news stories and links to relevant web sites. Multimedia administrators copy the news stories from the Employer's web site and insert the stories and related web links into the program. Also included in these e-mail messages are "teases," which are short, promotional statements used to advertise stories that will be broadcast on one of the Employer's television newscasts. Waller testified that she and the other multimedia administrators were responsible for writing the teases. Hurwitz testified that the multimedia administrators contacted bargaining unit employees in the newsroom and asked for teases. In either case, the record reflects that the multimedia administrators spend about one hour of their workday on all of their E-News duties.

In approximately January 2000, the Employer made some changes in how it approached its web site. At this time, Bob Wright, an NBC executive, held a forum that was broadcast in-house for all NBC television stations, including the Employer. Wright was asked about NBC's

inability to retain qualified Internet personnel. Wright replied that NBC was going to do what it could to retain such individuals. Subsequently, Steve Schwaid, the Employer's Vice President of News, spoke to the multimedia administrators and instructed them to be more aggressive with respect to getting material posted on the Employer's web site.

In January 2000, the Employer introduced a new computer program called "News Direct." This program allows news headlines to be displayed on a subscriber's desktop computer throughout the day. When a subscriber clicks on one of the headlines, the subscriber is connected to the news story posted on the Employer's web site. Multimedia administrators are responsible for copying headlines from a web site news story and inserting it into the News Direct program. It is unclear if the multimedia administrators write any of these headlines.

The News Direct program also allows the Employer to send breaking news alerts to the desktop computers of subscribers. Breaking news alerts are short messages of approximately 200 typed characters in length that briefly describe a breaking news story. The multimedia administrators are responsible for writing these short messages. Together, both News Direct functions take approximately one hour of work per day.

Also in January 2000, the Employer discontinued the practice of automatically forwarding all of the stories contained on the MSNBC web site to its web site and decided that it only wanted to post about ten news stories at any given time. Multimedia administrators began to use the Harvester computer program to look through the stories on the MSNBC web site and select appropriate stories for the Employer's web site. In "harvesting" news stories, a multimedia administrator enters the Harvester program, which lists all of the stories on the MSNBC web site, and places checkmarks next to the stories that are to be posted on the Employer's web site. Multimedia administrators perform this task about every 15 minutes.

In approximately March or April 2000, Assistant News Director Tully instructed the multimedia administrators to be aggressive in getting news stories posted on the Employer's web site. At about this same time, Vice President of News Schwaid instructed the multimedia

administrators to treat the Employer's web site like news radio and to operate like a miniature assignment desk.⁹ Waller testified that Tully instructed the multimedia administrators to be aggressive and to update news stories rather than wait for a subsequent newscast. Tully and Schwaid both testified that multimedia administrators were authorized to update stories by adding a limited amount of new information. As a result, the multimedia administrators would contact the Employer's assignment desk, the Employer's news reporters, the police or fire departments, or any other source that could possess new information on a story that was reported during a prior television broadcast. The multimedia administrators would also view the newscasts of other local television stations, listen to local news radio broadcasts, and review information obtained from the Associated Press (AP) wire in order to learn if a previously broadcast story subsequently had developed. The multimedia administrators would then update the stories by inserting the new information and post them on the Employer's web site.

Waller testified that during this period, multimedia administrator responsibilities went beyond updating previously televised news stories and involved story origination. As an example, Waller stated that on one occasion she and news reporter Bill Baldini were looking for the same videotape from a story involving problems with local basketball fans. Waller testified that she copied the same video as Baldini, wrote the story, had Tully review and edit the story, and posted the story on the web site. With respect to a story dealing with Philadelphia's 911 system, Waller testified that it had not been prepared by a bargaining unit employee. When further questioned about that story, Waller stated that she consulted the news reporter, assignment desk, police department, wire copy, and another television station's newscast to obtain information to update the story as a news reporter would. Waller also testified that she would pull stories from the wire and rewrite wire stories. Tully and Schwaid, on the other hand,

⁹ The assignment desk is the information gathering center in the Employer's newsroom. Individuals who work at the assignment desk check on stories by monitoring scanners and contacting other sources of information, such as the police department, the courts, or the Employer's news reporters in the field. Assignment desk employees are not part of the bargaining unit.

testified that multimedia administrators were never instructed to originate news stories and were not obligated to engage in such tasks. Tully further testified that she was not aware of multimedia administrators reworking stories from wire copy.

In May 2000, Assistant News Director Tully informed the multimedia administrators that they would be attending the Republican National Convention (RNC) held in Philadelphia for purposes of acquiring information for the Employer's web site. In July 2000, Tully contacted a large number of the Employer's employees, including two multimedia administrators, about obtaining media credentials for the RNC. The employees were instructed to submit their legal name, date of birth, and social security number. After the media credentials were obtained, the Employer informed the multimedia administrators that this did not automatically indicate that they would receive the credentials. In fact, numerous employees for whom credentials were obtained, including Director of Interactive Development Hurwitz and the two multimedia administrators, were not assigned to cover the RNC. Tully stated that it is her practice to distribute credentials to necessary personnel and then "hoard the rest" in case of an emergency.

During the period from January to August 2000, Waller inserted her by-line on stories that she updated and posted on the Employer's web site. Waller stated that she would place her by-line on a story at least once a day. There is no evidence that any other multimedia administrator inserted his or her by-line on news stories posted on the Employer's web site. Vice President of News Schwaid testified that by-lines are irrelevant to the Employer because they are not used in television news. With respect to television news, the Employer runs limited credits at the end of a broadcast, listing only the Vice President of News, the Assistant News Director, the producer, the director, and the program's managers. On the other hand, the Employer has placed the by-line of its health reporter, Cherie Bank, on health stories posted on its web site.

In August 2000, the multimedia administrators were instructed to cease updating stories and to stop using their by-lines on the stories that they posted.

D. The Employment Conditions and Duties Of Multimedia Administrators

Entry-level multimedia administrators are paid about \$35,000 annually and receive the NBC benefits package that is available to all non-union employees and differs from that received by employees represented by the Union. While the multimedia administrators work on the same floor as newsmen, they work in a separate area. Multimedia administrators work in the Internet department alongside the web master and two assistant web masters, and approximately ten feet from Director of Interactive Development Hurwitz. Multimedia administrators have never substituted for newsmen.

As noted, the multimedia administrators report to Assistant News Director Tully. Although the multimedia administrators establish their own monthly work schedules, Tully reviews the schedules and is the Employer official responsible for resolving any scheduling problems. Similarly, the multimedia administrators schedule their own vacation time, but Tully approves the schedule. Director of Interactive Development Hurwitz continues to be responsible for their computer training and the multimedia administrators will contact Hurwitz if they have a technical problem. Hurwitz also continues to have input in hiring multimedia administrators and in their performance appraisals. Because Hurwitz remains responsible for the overall appearance and content of the web site, he also continues to provide some direction concerning what is posted on the web site.

A February 2000 job posting for a multimedia administrator listed the following duties:

re-[format] news stories from broadcasts to MSNBC web site; responsible for coordinating live votes on the web, live chats & contributing story ideas that draw people to our web site; read and answer all viewer e-mail.

Waller testified that she spends about half of her workday reformatting previously broadcast news stories. The job posting also listed the following position requirements:

bachelor's degree in Communications, Journalism or equivalent work experience. Knowledge of Adobe PhotoShop for image editing, Adobe Premiere for video editing and Sound Edit for audio editing necessary. Knowledge of HTML is essential....

Waller also testified that unlike newsmen, multimedia administrators possess a variety of computer skills. Although Waller was required to take a writing test at the time she was hired, the evidence shows that the other multimedia administrators were not required to take a writing test. Waller also testified that she worked as an intern for a few newspapers while she was in college. There is no evidence that the other multimedia administrators possess any prior journalistic experience.

E. The Employment Conditions and Duties Of Newsmen

Entry-level newsmen are paid approximately \$49,000 annually and receive a different benefits package than that available to multimedia administrators. Newsmen have never substituted for multimedia administrators.

Newsmen report to and are supervised by Executive Producer Tina Luque.¹⁰ Luque creates weekly schedules for newsmen and posts the schedules eight days in advance. Newsmen are also subjected to a thorough vacation process, whereby all vacations for the upcoming year are decided at one point. Luque alone can effect changes to the newsmen vacation schedule.

Schedule III to the parties' 1999-2002 collective-bargaining agreement lists the duties of bargaining unit newsmen, which includes news writers and producers. These duties include:

the delivery of news on-the-air and ... the gathering, reporting, editing, writing and the preparing of such news; the presentation of sustaining news, promotional and public service broadcasts of two minutes or less, on or off camera, in shift. In addition, the [Employer] shall have the right to assign Newsmen to perform other services in the field of news or on news programs, i.e., Weathercasting, Sportscasting and the like.

¹⁰ Luque reports to Schwaid and Tully.

An August 1998 job posting for a news writer/producer listed the following duties:

Responsible for production of newscasts. Format news broadcast and cut-ins to air prior to newscasts. Contribute and develop story ideas. Also involved in day-to-day newswriting. Must be able to produce creative, energetic stories and programs, and have the ability to field produce. Supervise other news employees as appropriate.

The job posting listed the following requirements:

Significant experience as a producer, major market experience preferred
Good working knowledge of TV production techniques. Knowledge of newsroom computers preferred.

In addition, Waller testified that when she worked as a production assistant in the newsroom, she observed newsmen rework stories from wire copy. In order to be hired, potential newsmen must pass a writing test administered by the Employer.

II. Analysis and Conclusions

The Board has traditionally held that a unit clarification petition that seeks to alter the composition of a contractually agreed-upon unit dealing with the disputed classification during the term of a collective-bargaining agreement will be dismissed if, during the course of bargaining, the party filing the petition did not reserve its right to file for clarification of the unit. See Edison Sault Electric Co., 313 NLRB 753, 754 (1994); Wallace-Murray Corp., 192 NLRB 1090 (1971). At the same time, "[u]nit clarification may be appropriate where an employee classification has been newly created or has undergone recent substantial changes so as to create doubt regarding whether that classification should be accreted to an existing unit. But, unit clarification may not be used to add to a unit an employee classification which historically has been excluded from the unit." Robert Wood Johnson University Hospital, 328 NLRB No. 131, slip op. at 3 (July 8, 1999), citing Union Electric Co., 217 NLRB 666, 667 (1975). The petitioning party has the burden of establishing that clarification is appropriate. See Washington Post Co., 256 NLRB 1243, 1245 (1981).

It is undisputed in the current case that the job classification of multimedia administrator existed prior to the execution of the parties' 1999-2002 collective-bargaining agreement and was not included in the bargaining unit. In addition, the Union neither sought to include the multimedia administrators in the bargaining unit during the negotiations for the current agreement nor reserved its right to file a UC petition. Thus, if the job classification has not undergone "recent substantial changes," the present UC petition is untimely. In the event that the petition is found to have been filed in a timely manner, the unit will be clarified to include the multimedia administrators if they are found to "... display 'little or no separate group identity,' as well as demonstrate an 'overwhelming community of interest' with the employees in the preexisting unit." Dennison Mfg. Co., 296 NLRB 1034, 1036 (1989), quoting Safeway Stores, Inc., 256 NLRB 918 (1981).

A. The UC Petition Is Untimely Because the Multimedia Administrator Job Classification Has Not Undergone Recent Substantial Changes

The recent changes in the duties of the multimedia administrators are insubstantial. The Employer's introduction of the E-News and News Direct computer programs as well as the requirement that multimedia administrators harvest news stories from the MSNBC web site did not produce substantial changes in their job duties. With respect to E-News, multimedia administrators merely insert the top two or three news stories and related web links into the E-News program, which then e-mails the information to a subscriber. This is similar to the functions that multimedia administrators perform in reformatting a news story. While there is varied testimony about whether multimedia administrators write any of the teases that are included in the e-mail messages sent to subscribers,¹¹ the teases are very short and do not appear to require any significant amount of time to draft. In fact, multimedia administrators only spend about one hour of their workday performing all of their E-News duties.

With respect to News Direct, multimedia administrators merely copy headlines from the Employer's web site and insert them into the News Direct program. Again, this is a technical function similar to those functions involved in reformatting a news story for the Employer's web site. While it is unclear if multimedia administrators write any of these headlines, they are responsible for writing breaking news alerts that are sent to subscribers through the News Direct program. Breaking news alerts, however, are very short statements of approximately 200 characters in length¹² that also do not appear to require substantial time to write. Multimedia administrators spend about one hour of their workday performing all of their News Direct duties.

The Employer now requires the multimedia administrators to harvest stories from the MSNBC web site. Before January 2000, any story posted on the MSNBC web site was

¹¹ In its brief, the Union acknowledges that "teasers [sic] are usually written by writers within the bargaining unit."

¹² In order to provide a reference, approximately 200 characters comprise less than three lines of the text of this decision.

automatically forwarded to the Employer's web site. After January 2000, the Employer decided that it only wanted about 10 news stories posted on its web site. Thus, multimedia administrators are now required to select the stories to be posted on the Employer's web site. The multimedia administrators accomplish this by entering the Harvester program and placing checkmarks next to the stories that are to be posted on the Employer's web site. Such a task does not constitute a substantial departure from the multimedia administrators' traditional duties.

After January 2000, the Employer also instructed the multimedia administrators to be aggressive in updating news stories that were to be posted on its web site. As a result, multimedia administrators began contacting sources, such as the police and fire departments, in order to determine if previously televised news stories had developed. Multimedia administrators then used the information to update the news stories. While this indicated a change in job responsibilities, the change was only slight. Waller testified that from the time she was hired in November 1998, she would monitor other television newscasts in order to determine if a story had developed and that she was permitted to use new information to update a story. Thus, the record indicates that the Employer's recent instructions did not impose a new task on the multimedia administrators, but rather required them to perform more of this task.¹³ Accordingly, this did not constitute a substantial change in job functions.

¹³ The record does not indicate the percentage of time devoted by the multimedia administrators to updating news stories, but does indicate that the task did not occupy any substantial portion of their workday. Thus, the record indicates that at least half of a multimedia administrator's workday was spent performing the traditional function of reformatting previously broadcast news stories and that any updating that multimedia administrators may have engaged in constituted an insubstantial portion of their remaining duties.

Waller testified that multimedia administrators began to originate their own news stories. The record contains, however, only one example where Waller may have written a complete news story. Waller stated that on one occasion, Tully instructed her to do a story on problems with local basketball fans. The record reveals that the Employer was already in the process of preparing such a story given that a bargaining unit newsperson already had been assigned to the story and the Employer possessed preexisting video for the story. Waller accompanied the newsperson in order to obtain a copy of the preexisting videotape. Waller stated that she then wrote the story, gave it to Tully for editing, and then posted the story on the Employer's web site. Nevertheless, this is the only example on the record where Waller, or any other multimedia administrator, may have written a complete news story. Even this example, however, did not involve a situation where the multimedia administrator originated the story idea.

With respect to the story on Philadelphia's 911 system, Waller testified that she consulted several sources, including the news reporter and assignment desk, and updated the story as a news reporter would. Thus, it appears that Waller was merely updating a preexisting news story rather than writing an original story. Waller also testified that she would pull stories from the wire and rewrite those stories. Tully testified that she was not aware that the multimedia administrators performed such a function. Nevertheless, in these instances, Waller appeared to be updating news stories, a function that she had been performing at least on a limited basis since November 1998.

In sum, the Employer implemented changes after the execution of the parties' current contract that did not substantially alter the responsibilities of the multimedia administrators. See, e.g., Massachusetts Teachers Association, 236 NLRB 1427, 1428-29 (1978). Some of their E-News and News Direct duties merely required them to engage in another form of reformatting news stories for presentation to the public. Rather than taking stories from newscasts and posting them on the Employer's web site, the multimedia administrators utilized

information available on the web site and displayed it through another medium. While there is varied testimony about the writing responsibilities that multimedia administrators had with respect to these two programs, the record indicates that any new writing obligations were not substantial. Finally, the instruction to multimedia administrators to update news stories merely required them to increase the frequency with which they performed a preexisting function.

Accordingly, because there have not been any recent substantial changes in the multimedia administrator job classification, I find that the current petition is untimely. Moreover, even if the instant petition was timely, I would not clarify the bargaining unit to include the multimedia administrators because they do not share the requisite community of interest with bargaining unit newsmen. This will be discussed below.

B. The Multimedia Administrators Do Not Share the Requisite Community Of Interest with Bargaining Unit Newsmen

The Board has repeatedly followed a restrictive policy with regard to accretions to existing units because the employees who are accreted to an existing unit are not afforded the opportunity to vote in an election to choose their bargaining representative. See Compact Video Services, 284 NLRB 117, 119 (1987); Super Valu Stores, 283 NLRB 134, 136 (1987). As previously noted, the Board will find an accretion "... only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted...." Compact Video Services, supra at 119, quoting Safeway Stores, Inc., 256 NLRB 918 (1981).

The Board has identified certain factors that are critical to finding an accretion. These factors include: (1) interchange of employees, (2) day-to-day supervision of employees, (3) similarity of terms and conditions of employment, (4) similarity of functions and skills, (5) physical, functional, and administrative integration, and (6) bargaining history. See Compact

Video Services, *ibid.*, and cases cited therein. Further, the Board has stated that two of these factors, the degree of interchange of employees and whether the day-to-day supervision of employees is the same in the group sought to be accreted, are especially important to a finding of accretion. See Towne Ford Sales, 270 NLRB 311, 312 (1984), *enfd.* 759 F.2d 1477 (9th Cir. 1985), and cases cited therein.

With respect to employee interchange and day-to-day supervision, the record herein does not support a finding of accretion. Here, there has never been any employee interchange. Multimedia administrators have never substituted for bargaining unit newsmen, and newsmen have never substituted for multimedia administrators. Moreover, the day-to-day supervision of the multimedia administrators and the newsmen is different. Assistant News Director Tully is in charge of the day-to-day supervision of the multimedia administrators. At the same time, Director of Interactive Development Hurwitz responds to their technical problems and is responsible for their computer training. On the other hand, bargaining unit newsmen are supervised by Executive Producer Tina Luque. Accordingly, the record establishes that there is no employee interchange or common day-to-day supervision.

In assessing the other factors relating to community of interest, the record further indicates that a finding of accretion is not appropriate in this case. Multimedia administrators and newsmen have different compensation packages. Entry-level multimedia administrators receive \$35,000 annually while entry-level newsmen receive around \$49,000 annually. Multimedia administrators receive the NBC benefits package that is available to all of the Employer's non-union employees. Newsmen receive a different benefits package than the multimedia administrators. Moreover, multimedia administrators and newsmen have a number of dissimilar terms and conditions of employment. Multimedia administrators construct their own monthly schedules and set their own vacation times, consulting Tully only if a problem arises. Conversely, Luque constructs weekly schedules for newsmen and posts them eight days in advance. Newsmen are also subject to a thorough vacation process whereby the

Employer schedules all of their vacations for the upcoming year at one point in the year. Finally, although the Union emphasizes that multimedia administrators, like other newsroom employees, are restricted in scheduling vacation time during sweeps periods, this does not establish any particularized similarity in terms and conditions of employment since the evidence shows that other non-unit employees in the newsroom are also restricted in scheduling vacation during these periods.

There is also no similarity of functions. Multimedia administrators spend approximately half of their time performing the traditional function of reformatting previously broadcast news stories. Multimedia administrators also respond to viewer e-mail messages and perform some technical functions, such as copying and pasting text, in connection with E-News, News Direct, and harvesting. Although the record is not clear as to the precise scope of the writing responsibilities for E-News and News Direct, it appears that multimedia administrators may also be required to engage in some minimal amount of writing for these computer programs. Multimedia administrators also update news stories, a function they traditionally have performed. On the other hand, Schedule III of the parties' current collective-bargaining agreement states that newsmen are to, among other things, gather, report, edit, write, and prepare news. The August 1998 job posting for news writers/producers states that they are expected to, among other things, produce newscasts, engage in day-to-day news writing, create news stories, and field produce. This evidence demonstrates that the job classifications of multimedia administrator and newsmen have significantly dissimilar functions. While multimedia administrators spend at least half of their time reformatting news stories for the Employer's web site and engage in some minimal writing over the remainder of their workday, newsmen are responsible for producing newscasts, creating news stories, and field production. Moreover, while Waller testified that as a production assistant she would observe newsmen reworking stories from wire copy, this is just one function that newsmen may

have performed. Accordingly, I conclude that multimedia administrators and newsmen have dissimilar functions.

Any reliance that the Union places on the fact that Waller used by-lines on some stories that she posted, and that two multimedia administrators were told that they would receive media credentials for the Republican National Convention, in asserting a similarity of functions is misplaced. Vice President of News Schwaid testified that by-lines are irrelevant in the realm of television news since newsmen usually do not receive a by-line for a story televised during a newscast. In addition, the Employer displays limited credits after a newscast that do not include the names of newsmen. Waller's use of a by-line does not result in her inclusion in the unit just as the failure of newsmen to receive a by-line does not result in their exclusion from the unit. With respect to the media credentials, the record reveals that Assistant News Director Tully promised numerous employees that she would obtain credentials for them, but that she did not distribute media credentials to all of these employees. In addition to the two multimedia administrators who did not receive credentials, Director of Interactive Development Hurwitz also did not receive media credentials. Accordingly, these two factors do not provide any basis for finding a similarity of functions.

Multimedia administrators and bargaining unit newsmen also possess different skills. While multimedia administrators are required to possess a variety of computer skills, newsmen are not. Conversely, newsmen, according to the August 1998 job posting, are required to possess significant experience as news producers, preferably in a major television market, and have working knowledge of television production techniques. While Waller testified that she had worked as an intern for some newspapers during college, this does not amount to significant experience as a television news producer in a major market. The record did not show that the other three multimedia administrators possessed any news writing or production experience. Moreover, newsmen must pass a writing test administered by the Employer in order to be hired. With the exception of Waller, no other multimedia administrators were

required to take a writing test at the time of hire.¹⁴ Thus, the record evidence demonstrates that multimedia administrators and newsmen require different skills in order to perform their respective functions.

Furthermore, there is no substantial physical, functional, or administrative integration of the multimedia administrator and newsmen job classifications. Although both types of employees work on the same floor, they work in physically separate departments. The multimedia administrators work in the same area as Director of Interactive Development Hurwitz, the web master, and the two assistant web masters. Moreover, as stated previously, the individuals in the two classifications do not engage in the same primary functions¹⁵ and there is no common supervision. Thus, there is no substantial physical, functional, or administrative integration among the multimedia administrators and newsmen.

Finally, the multimedia administrators have been excluded from the bargaining unit since the job classification was created in January 1997. Although the parties negotiated the current contract from February to April 1999, the Union never sought to include the multimedia administrators in the bargaining unit. Thus, the parties' bargaining history does not support the accretion now sought by the Union.

In sum, based on the above and the record as a whole, I do not find that the multimedia administrators share an overwhelming community of interest with the employees in the existing bargaining unit, and I also do not find that the disputed employees have little or no separate group identity as required by the Board's accretion policy.¹⁶

¹⁴ It is not clear how similar the writing test taken by Waller was to the test usually taken by newsmen. However, the writing test that Waller took appears to be of some lesser form since Waller testified that she was not qualified to be a newsmen because she had not taken the requisite writing test.

¹⁵ While multimedia administrators contact newsmen for teases and for information concerning the development of stories, the record indicates, as previously noted herein, that such contact is not substantial.

¹⁶ In The Sun, 329 NLRB No. 74 (September 30, 1999), the Board discussed the standards to be used when analyzing unit clarification proceedings involving bargaining units defined by the work performed. Because the bargaining unit in this case is not defined by the work performed, that case is inapplicable.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

Dated at Pittsburgh, Pennsylvania this 6th day of November 2000.

/s/ Gerald Kobell

Gerald Kobell, Regional Director
Region 6

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